

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the matter of)	
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Petition of Paradise MergerSub, Inc. for a)	
Declaratory Ruling Pursuant to section 310(b)(4))	ISP-PDR-20041006-00009
of the Communications Act of 1934, as Amended)	
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Order and Declaratory Ruling

Adopted: January 25, 2005

Released: January 25, 2005

By the Chief, Policy Division, International Bureau:

I. INTRODUCTION

1. We have before us a petition for declaratory ruling ("Petition") submitted by Paradise MergerSub, Inc. ("Paradise MergerSub" or "Petitioner")¹ filed pursuant to section 310(b)(4) of the Communications Act of 1934, as amended² (the "Act") and in connection with its planned acquisition of Verizon Hawaii, Inc. ("Verizon Hawaii"), a common carrier radio licensee.³ As we explain below, we find, subject to the limitations contained in this Order and Declaratory Ruling, that the public interest

¹ Petition of Paradise MergerSub, Inc. for a Declaratory Ruling Pursuant to section 310(b)(4) of the Communications Act of 1934, as amended, ISP-PDR-20041006-00009 (filed Oct. 6, 2004), amended (Oct. 15, 2004) ("Petition"). A supplement to the Petition for Declaratory Ruling was later filed on December 14, 2004, January 3, 2005, and January 14, 2005. Letter from William E. Kennard, Managing Director, The Carlyle Group and Karen Brinkmann, Jeffrey A. Marks, & Thomas A. Allen, Latham & Watkins, LLP to Marlene Dortch, Secretary, Federal Communications Commission at 1 (Dec. 14, 2005) ("Dec. 14 Letter"). Letter from William E. Kennard, Managing Director, The Carlyle Group and Karen Brinkmann, Jeffrey A. Marks, & Thomas A. Allen, Latham & Watkins, LLP to Marlene Dortch, Secretary, Federal Communications Commission (Jan. 3, 2005) ("Jan. 3 Letter"). Letter from William E. Kennard, Managing Director, The Carlyle Group and Karen Brinkmann, Jeffrey A. Marks, & Thomas A. Allen, Latham & Watkins, LLP to Marlene Dortch, Secretary, Federal Communications Commission (Jan. 14, 2005) ("Jan. 14 Letter").

² 47 U.S.C. § 310(b)(4) (providing that "No broadcast or common carrier or aeronautical en route or aeronautical fixed radio station license shall be granted to or held by ... any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government, or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest would be served by the refusal or revocation of such license.").

³ See *Assignment of License Authorization Applications, Transfer of Control of Licensee Applications, De Facto Transfer Lease Applications and Spectrum Manager Lease Notifications, Action*, 0001778004, Public Notice, Rep. No. 1921 (rel. Aug. 25, 2004) (grant of wireless transfer of control application); *Streamlined Domestic Section 214 Application Granted*, Public Notice, WC Docket No. 04-234, DA 04-2541 at 2 (rel. Aug. 17, 2004) (grant of domestic section 214 transfer of control application).

would not be served by prohibiting the proposed indirect foreign ownership of Verizon Hawaii in excess of the 25 percent benchmark under section 310(b)(4) of the Act.⁴

II. BACKGROUND

2. Verizon Hawaii is an incumbent local exchange carrier that holds certain Title III common carrier licenses.⁵ One hundred percent of the stock of Verizon Hawaii is owned by GTE Corporation, a subsidiary of Verizon Communications, Inc.⁶

3. Paradise MergerSub, a Delaware corporation, is a wholly-owned subsidiary of Paradise HoldCo, Inc. ("Paradise HoldCo"), also a Delaware corporation.⁷ At closing, 100 percent of the ownership interests in Paradise HoldCo will be held collectively by the following investment funds associated with The Carlyle Group:⁸ (1) Carlyle Partners III Hawaii, L.P. ("CP III Hawaii"), (2) Carlyle Partners III Hawaii A, L.P. ("CP III Hawaii A"), (3) Carlyle Hawaii Partners, L.P. ("CHP") and, depending on the response of equity markets near the time of closing, (4) Carlyle Hawaii Partners II, L.P. ("CHP II") (collectively, the "Carlyle Partnerships").⁹ Each of the Carlyle Partnerships is formed under the laws of Delaware, and each is controlled by a sole general partner, TC Group III, L.P., also a Delaware limited partnership.¹⁰ TC Group III, L.P., in turn, is ultimately controlled by TCG Holdings, L.L.C. ("TCG Holdings"), which is organized under Delaware law and headquartered in Washington, D.C.¹¹ TCG Holdings, in turn, is managed by a committee comprised of three managing members, each of whom is a U.S. citizen. Thirty non-managing members¹² hold equity interests in TCG Holdings, twenty-six of whom are U.S. citizens. The remaining four non-managing members are citizens of World Trade Organization ("WTO") Member countries who hold, in the aggregate, less than 2.20 percent of the equity interests in TCG Holdings.¹³

4. Pursuant to the Merger Agreement between and among GTE Corporation, its wholly-owned subsidiary, Verizon HoldCo LLC ("Verizon HoldCo"), Paradise HoldCo, and Paradise MergerSub, Verizon HoldCo will be merged with Paradise MergerSub through a stock transfer of

⁴ See *infra* ¶¶ 13-27.

⁵ Petition at 1; *Application for Assignments of Authorization and Transfer of Control of Verizon Hawaii, Inc., FCC Wireless Telecommunications Bureau*, File No. 0001778004, Exhibit 1 at 1 (filed Jun. 24, 2004) ("Original Transfer Application").

⁶ Petition at 1; Original Transfer Application Exhibit 1 at 1.

⁷ Petition at 3-4; Original Transfer Application Exhibit 1 at 1-2.

⁸ According to the Petition, The Carlyle Group is a global private equity firm with more than \$18 billion under management across 23 funds. The petition further notes that The Carlyle Group has a record of successful investments in the telecommunications sector and has enabled many of the companies in its portfolio to access efficient sources of capital over time. Petition at 3.

⁹ Petition at 3-5; Original Transfer Application Exhibit 1 at 1-3. For a more thorough analysis of the ownership of the Carlyle Partnerships, see Section III.A.

¹⁰ Petition at 3-5; Original Transfer Application Exhibit 1 at 1-3. The Petition states that TC Group III, L.P. has an equity interest in each of the partnerships (at most 0.10%), which has been rounded down to 0% equity for purposes of the petition's foreign ownership analysis. Petition at 9.

¹¹ Petition at 4-5.

¹² According to the Petitioner, the U.S. domestic non-managing members of TCG Holdings either are individuals who are U.S. citizens or are domestically organized entities owned by U.S. citizens. Petition at 4.

¹³ The foreign non-managing members of TCG Holdings are comprised of two French citizens, one Australian citizen, and a citizen of Japan. Petition at 4-6.

Verizon HoldCo to Paradise HoldCo.¹⁴ Paradise MergerSub will be the sole surviving company and succeed to and assume all the rights and obligations of Verizon HoldCo (including owning all the stock of Verizon Hawaii).¹⁵

5. The Petitioner has already received Commission consent to the transfer of control of Verizon Hawaii pursuant to section 310(d) of the Act.¹⁶ However, prior to the consummation of the proposed transaction, the Petitioner submitted the instant Petition on October 6, 2004 advising the Commission that, for various reasons, it was likely that indirect foreign investment in Paradise MergerSub would exceed the 25 percent benchmark set forth in section 310(b)(4) of the Act.¹⁷ Accordingly, Paradise MergerSub requests a declaratory ruling that the public interest would not be served by prohibiting up to and including 45 percent indirect equity interests and 47.20 percent indirect voting interests in Paradise MergerSub, the direct parent of Verizon Hawaii, by the Carlyle Partnerships, including up to approximately 2.20 percent equity and voting interests by entities with their principal places of business in non-WTO Member countries or by individuals who are citizens of non-WTO Member countries. The Petitioner also requests that the Commission provide it with the flexibility to allow any individual investor from the United States or a WTO Member country to increase its equity interest in Paradise MergerSub up to approximately 9.99 percent (with total non-WTO Member ownership not to exceed an aggregate 2.20 percent).¹⁸

6. On November 4, 2004, the Commission released a public notice that found the Petition acceptable for filing and requested comment on the Petition filed by Paradise MergerSub.¹⁹ No comments were filed in response to the public notice.

III. DISCUSSION

7. We consider the proposed indirect foreign ownership of Verizon Hawaii pursuant to our public interest analysis under section 310(b)(4) of the Act and the Commission's foreign ownership policies adopted in the *Foreign Participation Order*.²⁰ As part of that analysis, we consider any national security, law enforcement, foreign policy, or trade policy concerns raised by the proposed indirect foreign investment in Verizon Hawaii.²¹

8. Section 310(b)(4) of the Act establishes a 25 percent benchmark for investment by foreign individuals, corporations, and governments in entities that control U.S. common carrier radio

¹⁴ Petition at 1; Original Transfer Application Exhibit 1 at 1. The Petitioner notes that prior to the effective time of the merger, GTE Corporation will transfer the stock of Verizon Hawaii, an incumbent local exchange carrier, to Verizon HoldCo. *Id.*

¹⁵ Petition at 1-2; Original Transfer Application Exhibit 1 at 1.

¹⁶ See *supra* note 3.

¹⁷ Petition at 2 (explaining the reasons that made it likely that The Carlyle Group will need foreign investment in excess of the 25% benchmark set forth in section 310(b)(4) of the Act).

¹⁸ Petition at 7, 23-24.

¹⁹ *Non Streamlined International Applications Accepted for Filing*, Public Notice, Rep. No. TEL-00849NS (rel. Nov. 4, 2004).

²⁰ 47 U.S.C. § 310(b)(4); *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, FCC 97-398, 12 FCC Rcd 23891 (1997) ("*Foreign Participation Order*"), Order on Reconsideration, FCC 00-339, 15 FCC Rcd 18158 (2000).

²¹ The Commission considers national security, law enforcement, foreign policy, and trade policy concerns when analyzing a petition for declaratory ruling pursuant to section 310(b)(4). *Foreign Participation Order*, 12 FCC Rcd at 23918-21, ¶¶ 59-66.

licensees. This section also grants the Commission discretion to allow higher levels of foreign ownership if it determines that such ownership is not inconsistent with the public interest.²²

9. The calculation of foreign ownership interests under section 310(b)(4) is a two-pronged analysis in which the Commission examines separately the equity interests and the voting interests in the licensee's parent.²³ The Commission calculates the equity interest of each foreign investor in the parent and then aggregates these interests to determine whether the sum of the foreign equity interests exceeds the statutory benchmark. Similarly, the Commission calculates the voting interest of each foreign investor in the parent and aggregates these voting interests.²⁴ The presence of aggregated alien equity or voting interests in a common carrier licensee's parent in excess of 25 percent triggers the applicability of section 310(b)(4)'s statutory benchmark.²⁵ Once the benchmark is triggered, section 310(b)(4) directs the Commission to determine whether the "public interest will be served by the refusal or revocation of such license."²⁶ In the *Foreign Participation Order*, the Commission concluded that the public interest would be served by permitting greater investment by individuals or entities from WTO Member countries in U.S. common carrier and aeronautical fixed and en route radio licensees.²⁷ Therefore, with respect to indirect foreign investment from WTO Members, the Commission replaced its "effective competitive opportunities," or "ECO," test with a rebuttable presumption that such investment generally raises no competitive concerns.²⁸ In evaluating an applicant's request for approval of foreign ownership interests under section 310(b)(4), the Commission uses a "principal place of business" test to determine the nationality or "home market" of foreign investors.²⁹

10. In light of the policies adopted in the *Foreign Participation Order*, we begin our evaluation of the proposed transaction under section 310(b)(4) by calculating the proposed foreign equity

²² 47 U.S.C. § 310(b)(4).

²³ See *BBC License Subsidiary L.P.*, Memorandum Opinion and Order, DA 95-364, 10 FCC Rcd 10968, 10973, ¶ 22 (1995) ("*BBC License Subsidiary*").

²⁴ See *id.* at 10972, ¶ 20, & 10973-74, ¶¶ 22-25.

²⁵ See *id.* at 10973-74, ¶ 25.

²⁶ *Sprint Ruling*, 11 FCC Rcd at 1857, ¶ 47 (quoting section 310(b)(4)). It is the licensee's obligation to inform the Commission before its indirect foreign ownership exceeds the 25% benchmark set forth in section 310(b)(4). See *Fox Television Stations, Inc.*, Order, FCC 95-188, 10 FCC Rcd 8452, 8474, ¶ 52 (1995).

²⁷ *Foreign Participation Order*, 12 FCC Rcd at 23896, ¶ 9, 23913, ¶ 50, & 23940, ¶¶ 111-12.

²⁸ *Id.* at 23896, ¶ 9, 23913, ¶ 50, & 23940, ¶ 111-12.

²⁹ To determine a foreign entity's home market for purposes of the public interest determination under section 310(b)(4), the Commission will identify and balance the following factors: (1) the country of a foreign entity's incorporation, organization or charter; (2) the nationality of all investment principals, officers, and directors; (3) the country in which the world headquarters is located; (4) the country in which the majority of the tangible property, including production, transmission, billing, information, and control facilities, is located; and (5) the country from which the foreign entity derives the greatest sales and revenues from its operations. *Foreign Participation Order*, 12 FCC Rcd at 23941, ¶ 116 (citing *Market Entry and Regulation of Foreign-Affiliated Entities*, Report and Order, FCC 95-475, 11 FCC Rcd 3873, 3951, ¶ 207 (1995)). For examples of cases applying the five-factor "principal place of business" test, see *Lockheed Martin Global Telecommunications, Comsat Corporation, and Comsat General Corporation, Assignor, and Telenor Satellite Mobile Services, Inc., and Telenor Satellite, Inc., Assignee, Applications for Assignment of Section 214 Authorizations, Private Land Mobile Radio Licenses, Experimental Licenses, and Earth Station Licenses and Petition for Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act*, Order and Authorization, 16 FCC Rcd 22897 (2001), *erratum*, 17 FCC Rcd 2147 (Int'l Bur. 2002), *recon. denied*, 17 FCC Rcd 14030 (2002); *Space Station System Licensee, Inc., Assignor, and Iridium Constellation LLC, Assignee, et al.*, Memorandum Opinion, Order and Authorization, 17 FCC Rcd 2271 (Int'l Bur. 2002).

and voting interests in Paradise MergerSub and Paradise HoldCo, the direct and indirect U.S. parent companies of Verizon Hawaii, the common carrier licensee. We then determine whether these foreign interests properly are ascribed to individuals or entities that are citizens of, or have their principal places of business in, WTO Member countries. The Commission stated, in the *Foreign Participation Order*, that it will deny an application if it finds that more than 25 percent of the ownership of an entity that controls a common carrier radio licensee is attributable to parties whose principal place(s) of business are in non-WTO Member countries that do not offer effective competitive opportunities to U.S. investors in the particular service sector in which the applicant seeks to compete in the U.S. market, unless other public interest considerations outweigh that finding.³⁰

11. In *Wilner & Scheiner* and its progeny, the Commission has set forth a standard for calculating both alien equity and voting interests held in a licensee or in the licensee's parents where such interests are held through intervening entities.³¹ In calculating attributable alien equity interests in a parent company, the Commission uses a multiplier to dilute the percentage of each investor's equity interest in the parent company when those interests are held through intervening companies. The multiplier is applied to each link in the vertical ownership chain, regardless of whether any particular link in the chain represents a controlling interest in the company positioned in the next lower tier.³² Once the *pro rata* equity interests of each alien investor are calculated, these interests then are aggregated to determine whether the sum of the interests exceeds the statutory benchmark.³³

12. By contrast, in calculating alien voting interests in a parent company, the multiplier is not applied to any link in the vertical ownership chain that constitutes a controlling interest in the company positioned in the next lower tier.³⁴ In circumstances where voting interests in the U.S. parent of a common carrier licensee are held through intervening partnerships, the multiplier is not applied to dilute a general partnership interest or uninsulated limited partnership interest held by a foreign individual or entity. A general partner is considered to hold the same voting interest as the partnership holds in the company situated in the next lower tier of the vertical ownership chain. Similarly, in the absence of a specific demonstration that a limited partner effectively is insulated from active involvement in partnership affairs, a limited partner will be deemed to hold the same voting interest as the partnership holds in the company in the next lower tier of the vertical ownership chain.³⁵ Thus, when evaluating foreign voting interests in the U.S. parent company of a common carrier licensee, it is possible that multiple investors will be treated as holding the same voting interest in a U.S. parent company where the investment is held through multiple intervening holding companies or partnerships. Our purpose in identifying the citizenship of the specific individuals or entities that hold these interests is not to increase the aggregate level of foreign investment, but rather to determine whether any particular interest that a foreign investor proposes to acquire raises potential risks to competition or other public interest concerns,

³⁰ See *Foreign Participation Order*, 12 FCC Rcd at 23946, ¶ 131.

³¹ See generally *Request for Declaratory Ruling Concerning the Citizenship Requirements of Sections 310(b)(3) and (4) of the Communications Act of 1934, as amended*, Declaratory Ruling, FCC 85-295, 103 F.C.C. 2d 511 (1985) ("*Wilner & Scheiner I*"), recon. in part, FCC 86-406, 1 FCC Rcd 12 (1986); *BBC License Subsidiary*, 10 FCC Rcd at 10973-74, ¶¶ 22-25.

³² See *BBC License Subsidiary*, 10 FCC Rcd at 10973-74, ¶¶ 24-25.

³³ See *id.* at 10973-74, ¶ 25.

³⁴ See *id.* at 10973, ¶ 23; see also *Wilner & Scheiner I*, 103 F.C.C. 2d at 522, ¶ 19.

³⁵ See, e.g., *XO Communications, Inc., Applications for Consent to Transfer Control of Licenses and Authorizations Pursuant to Sections 214 and 310(d) and Petition for Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act*, IB Docket No. 02-50, Memorandum Opinion, Order and Authorization, 17 FCC Rcd 19212, 19222, ¶ 24 (Int'l Bur., Wireless Tel. Bur. & Wireline Comp. Bur. 2002) ("*XO Communications*").

such as national security or law enforcement concerns.³⁶

13. For the reasons set forth below, we conclude that it would not serve the public interest to prohibit the proposed indirect foreign ownership of Verizon Hawaii under section 310(b)(4) of the Act, and we grant Paradise MergerSub's Petition.³⁷ In particular, we find that virtually all of the foreign equity and voting interests identified in the record that would be held indirectly in Paradise MergerSub, the direct U.S. parent of Verizon Hawaii, through the Carlyle Partnerships are ascribed to individuals and entities from WTO Member countries. Accordingly, the Petitioner is entitled to a rebuttable presumption that the proposed indirect foreign ownership of Verizon Hawaii would not pose a risk to competition in the U.S. market, and there is no evidence to rebut this presumption. Further, we find that no significant national security, law enforcement, foreign policy, or trade policy concerns are raised by the proposed indirect foreign investment in Verizon Hawaii. We therefore conclude, pursuant to section 310(b)(4) of the Act and the Commission's precedent for indirect investment by WTO Members in U.S. common carrier radio licensees, that it would not serve the public interest to prohibit the proposed indirect foreign ownership of Verizon Hawaii through Paradise MergerSub and the Carlyle Partnerships.

A. Attribution of Foreign Ownership Interests

14. We calculate below the foreign equity and voting interests that would be held in Paradise MergerSub and Paradise HoldCo, the direct and indirect U.S. parents of Verizon Hawaii, by and through the Carlyle Partnerships. As the interests that would be held in Paradise MergerSub and Paradise HoldCo through the Carlyle Partnerships are the same, we refer to Paradise MergerSub in computing these interests. Based on our review of the record, we find that: (1) the maximum total indirect foreign equity and voting interests identified in the record that would be held in Paradise MergerSub through the Carlyle Partnerships, by their limited partners, is 43.08 percent, and (2) the maximum additional indirect foreign voting interest identified in the record that would be held in Paradise MergerSub through the Carlyle Partnerships' controlling interest holders is 2.20 percent. We also determine that almost all of these foreign equity and voting interests constitute investment from WTO Member countries.

15. **Foreign Equity and Voting Interests Held By The Carlyle Partnerships.** The Carlyle Partnerships collectively will hold, at closing, 100 percent of the ownership interests in Paradise MergerSub. The Petitioner states that, although the exact equity ownership to be held by each of the Carlyle Partnerships in Paradise MergerSub is not yet finalized, it anticipates that CP III Hawaii and potentially CHP II will hold 10 percent or greater equity and voting interests in Paradise MergerSub.³⁸ It also anticipates that CP III Hawaii A and CHP will each hold less than 10 percent equity and voting

³⁶ See *Foreign Participation Order*, 12 FCC Rcd at 23940-41, ¶¶ 111-15.

³⁷ This transaction does not raise any issues under section 310(a) and 310(b)(1)-(b)(3) of the Act. Section 310(a) of the Act prohibits any radio license from being "granted to or held by" a foreign government or its representative. 47 U.S.C. § 310(a). In this case, no foreign government or its representative will hold any of the radio licenses. Section 310(b)(1)-(2) of the Act prohibits common carrier, broadcast and aeronautical fixed or *en route* radio licenses from being "granted to or held by" aliens, or their representatives, or foreign corporations. 47 U.S.C. § 310(b)(1), (b)(2). According to the Petition, no alien, representative, or foreign corporation will hold any of the common carrier licenses. Accordingly, the proposed transaction is not inconsistent with the foreign ownership provisions of section 310(a) and 310(b)(1)-(b)(2) of the Act. See *VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9804-9809, ¶¶ 38-48. Additionally, because the proposed transaction involves foreign investment in and through Paradise MergerSub and Paradise HoldCo, the direct and indirect U.S. holding companies that would control Verizon Hawaii, it does not trigger section 310(b)(3) of the Act, which places a 20% limit on alien, foreign corporate or foreign government ownership of entities that hold common carrier, broadcast and aeronautical fixed or *en route* Title III licenses. Compare 47 U.S.C. § 310(b)(3) with § 310(b)(4). See *Wilner & Scheiner I*, 103 F.C.C. 2d 511.

³⁸ Petition at 4.

interests in Paradise MergerSub. In particular, the Petition provides the following estimates of the equity and voting interests that will be held by each of the Carlyle Partnerships in Paradise MergerSub: (1) CP III Hawaii (54.06% to 96.50%), (2) CHP (0.00% to 7.14%), (3) CP III Hawaii A (2.00% to 5.40%), and depending on the response of the equity markets near closing, (4) CHP II (0.00% to 35.71%).³⁹

16. The Petitioner submits that each of the Carlyle Partnerships is properly viewed as having its principal place of business in the United States. As described in the Petition, each of the Carlyle Partnerships is organized under Delaware law and headquartered in the United States.⁴⁰ Each partnership is controlled by a sole general partner, TC Group III, L.P., a Delaware limited partnership.⁴¹ TC Group III, L.P., in turn, is controlled by its sole general partner, TC Group III, L.L.C., a Delaware limited liability company.⁴² TC Group III, L.P. also has one limited partner, a U.S. citizen.⁴³ The sole member of TC Group III, L.L.C. is TC Group, L.L.C., a Delaware limited liability company.⁴⁴ TC Group, L.L.C. is 94.19 percent owned by its sole managing member, TCG Holdings,⁴⁵ which is organized under Delaware law and is headquartered in Washington, D.C.⁴⁶ TCG Holdings, in turn, is managed by a committee comprised of three managing members, each of whom is a U.S. citizen.⁴⁷ Thirty non-managing members hold equity interests in TCG Holdings, twenty-six of whom are U.S. citizens.⁴⁸ The remaining non-managing members are citizens of WTO Member countries who hold, in the aggregate, less than 2.20 percent of the equity interests in TCG Holdings.⁴⁹

17. With respect to the foreign limited partners of the Carlyle Partnerships, the Petition states that all the limited partners are insulated in accordance with the Commission's insulation criteria, and have no authority over the day-to-day management of their partnerships, nor over Paradise MergerSub or its proposed operation of Verizon Hawaii.⁵⁰ Foreign limited partners hold the following interests in the Carlyle Partnerships: (1) CP III Hawaii (44.39% equity and voting),⁵¹ (2) CP III Hawaii A (4.54% equity and voting),⁵² and (3) CHP – no foreign equity or voting interests.⁵³ With respect to CHP II, the Petition

³⁹ According to the Petition, depending on the response of the equity markets near the time of closing, Paradise MergerSub may not seek any investment from CHP II. In that case, CP III Hawaii will make the additional required investment. Petition Attachment D at 6.

⁴⁰ Petition at 11.

⁴¹ Petition at 4; *see also supra* note 10.

⁴² Petition at 4.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ A U.S. organized state pension fund holds 5.56% of TC Group, L.L.C., and the remaining 0.25% is owned by an entity that is 100% owned and controlled by the three managing members of TCG Holdings, all of whom are citizens of the United States. Petition at 4 n.6; Jan. 3 Letter at 1.

⁴⁶ Petition at 4-5.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Petition at 5-6; Petition Attachment D at 10. According to the Petition, the four foreign non-managing members of TCG Holdings are all citizens of WTO Member countries (two are citizens of France, one is a citizen of Australia, and the other is a citizen of Japan). *Id.*

⁵⁰ Petition at 12.

⁵¹ Petition Attachment D at 4.

⁵² *Id.*

states that if CHP II participates in the proposed transaction, it would hold no more than a 35.71 percent indirect equity and voting interest in Paradise MergerSub and that foreign investment in CHP II would be subject to the following restrictions: (1) all limited partners would be insulated in accordance with the Commission's insulation criteria; (2) no entity, including entities that already hold limited partnership interests, will hold 10 percent or more of the total ownership interests in Paradise MergerSub, aggregating interests across the Carlyle Partnerships; (3) there will be no non-WTO Member country investment in CHP II; and (4) the total, indirect foreign ownership in Paradise MergerSub from the Carlyle Partnerships, including any additional foreign equity arising through CHP II, will be capped at 45 percent indirect equity and 47.20 percent indirect voting interests.⁵⁴

18. Thus, according to the Petitioner, U.S. domestic limited partners of CP III Hawaii, CHP, and CP III Hawaii A hold a majority of the ownership interests in their respective partnerships and only CHP II, which would hold no more than a 35.71 percent interest in Paradise MergerSub, could potentially be majority owned by foreign limited partners. It further submits that the vast majority of partnership revenues will be derived from the Carlyle Partnerships' investment in Paradise MergerSub.⁵⁵ Based on our review of the record and the representations made by the Petitioner, we find that each of the Carlyle Partnerships has its principal place of business in the United States. Because we have determined that each of the Carlyle Partnerships has its principal place of business in the United States, we do not attribute to the individual Carlyle Partnerships themselves any indirect foreign equity or voting interest in Paradise MergerSub.

19. ***Foreign Equity and Voting Interests Held Through the Carlyle Partnerships.*** We next calculate the foreign equity and voting interests that will be held in Paradise MergerSub through the Carlyle Partnerships. As we explained above, the exact equity ownership held by each of the Carlyle Partnerships in Paradise MergerSub has not yet been finalized.⁵⁶ The Petition, therefore, does not identify the precise ownership amounts to be held by each of the Carlyle Partnerships in Paradise MergerSub. Accordingly, we base our calculations of the foreign equity and voting interests that will be held in Paradise MergerSub on the maximum proposed levels of ownership by the Carlyle Partnerships and on the identified levels of foreign ownership in the Carlyle Partnerships. This approach provides us with the most conservative estimate of the level of foreign equity and voting interests that will be held in Paradise MergerSub through CP III Hawaii and CP III Hawaii A, the two Carlyle Partnerships that currently have foreign investors. We do not include in our calculations the foreign investment that may be held through CHP II based on the Petitioner's representations that, in the event CHP II participates in the transaction, the total indirect foreign ownership in Paradise MergerSub from the Carlyle Partnerships would be capped at 45 percent equity and 47.20 percent voting interests, which mirrors the maximum levels of indirect foreign ownership requested by the Petition.⁵⁷

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⁵³ The Petitioner states that the limited partners of CHP will consist entirely of individual citizens of the United States and that there will be no foreign limited partners in CHP. Petition Attachment D at 5.

⁵⁴ The petition calculates an additional 2.20% foreign voting interest for the foreign non-managing members of TCG Holdings, all of whom are from WTO Member countries. *See supra* ¶ 16.

⁵⁵ Petition at 11. The Carlyle Partnerships have no tangible property. *Id.*

⁵⁶ *See supra* ¶ 15.

⁵⁷ *See, e.g.,* Petition at 1, 23-24. We note that the difference between the requested amount and the foreign ownership amounts we calculate in this Order and Declaratory Ruling would be covered by the additional, aggregate 25% amount, or "cushion," that we provide in our ruling set forth in ¶ 25, *infra*, and that we typically provide to petitioners. *See, e.g., Intelsat, Ltd., Transferor, and Zeus Holdings Limited, Transferee, Consolidated Application for Consent to Transfers of Control of Holders of Title II and Title III Authorizations and Petition for Declaratory*

(continued....)

20. With respect to the foreign equity interests that would be held in Paradise MergerSub through the Carlyle Partnerships, the Petitioner has submitted information for the record that shows that: (1) limited partners that have their principal places of business in, or that are citizens of, WTO Member countries hold 42.11 percent of the equity and voting interests in CP III Hawaii, and (2) limited partners that have their principal places of business in, or that are citizens of, non-WTO Member countries hold 2.28 percent of the equity interests in CP III Hawaii.⁵⁸ The Petitioner has also submitted information for the record that shows that (1) individual investors from WTO Member countries hold 4.46 percent equity and voting interests in CP III Hawaii A⁵⁹ and (2) a citizen from the Ukraine, a non-WTO Member country, holds a 0.08 percent equity and voting interest in CP III Hawaii A.⁶⁰ All of the foreign limited partners of the Carlyle Partnerships are insulated in accordance with the Commission's insulation criteria and have no authority over the day-to-day management of their partnerships, Paradise MergerSub, or the proposed operations of Verizon Hawaii.⁶¹

21. As we explained above, we base our calculation of the foreign equity and voting interests that would be held in Paradise MergerSub through the Carlyle Partnerships on the maximum proposed levels of indirect ownership by the Carlyle Partnerships and on the identified levels of foreign ownership in the Carlyle Partnerships. Using the multiplier, we find that the foreign limited partners of CP III Hawaii and CP III Hawaii A from WTO Member countries collectively would hold a 40.88 percent indirect equity interest in Paradise MergerSub.⁶² Based upon the record and the representations made by

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Ruling under Section 310 of the Communications Act of 1932, as amended, Order and Authorization, DA 04-4034, ¶ 27 (rel. Dec. 22, 2004) (Int'l. Bur., Wireless Tel. Bur., & OET) ("*Intelsat-Zeus Order*").

⁵⁸ Petition Attachment D at 5; Dec. 14 Letter Appendix A. In response to a staff request, Paradise MergerSub provided the equity percentages held by CP III Hawaii's foreign investors using the following categories: High Net Worth individuals and entities (16.19%); Government Agencies (non-Pension) (5.91%); Corporate or Public/Government Pension (4.25%); Banks (4.14%); Fund of Funds (4.01%); Insurance (3.94%); Private Bank (1.18%); and Foundation, Endowment, University, and Trust (0.90%). Dec. 14 Letter Appendix A. Petitioner could not determine the appropriate category of investors for a small percentage of foreign investment (3.89%) that is held by certain limited partners of CP III Hawaii. Jan. 14 Letter at 2. Accordingly, Paradise MergerSub classified these investments as "Unknown." *Id.* According to Paradise MergerSub, these interests are held by 27 limited partners, which each hold less than 1 percent in the partnership and which are organized in the Bahamas, British Virgin Islands, Cayman Islands, Germany, Guernsey (Channel Islands), Jersey (Channel Islands), Liberia, Luxembourg, Monaco, Panama, Singapore, and Switzerland. This information was confirmed by cross-checking the entities' country of organization with the entities' respective tax jurisdiction as listed on their W-8 and/or W-9 tax forms. Further, according to the Petitioner, the total non-WTO ownership in CP III Hawaii held by limited partners in the "Unknown" category is less than 0.5%. *Id.* In cases of doubt, certain "Unknown" partner interests were included in the total 2.28 percent "non-WTO" count. *Id.*; see also *id.* at 1 (stating that the 2.28 percent count also includes any and all non-WTO ownership referenced in Appendix A of the December 14 Letter, including the references made in footnotes 1, 2, 3, 4, and 7 of the appendix).

⁵⁹ Petition Attachment D at 4-6. This 4.46 percent is held by individuals who are citizens of WTO Member countries, including Australia, Belgium, Canada, Colombia, France, Germany, Hong Kong, Italy, Japan, Korea, Malaysia, Mexico, Spain, Taiwan, Tanzania, The Netherlands, and the United Kingdom. Dec. 14 Letter at 2.

⁶⁰ Petition Attachment D at 4-6; Dec. 14 Letter at 2.

⁶¹ See *supra* ¶ 17. See also Petition at 5 (citing *Corporate Ownership Reporting and Disclosure by Broadcast Licensees*, 58 Rad. Reg. 2d (P & F) 604, ¶ 27 (1985); *XO Communications*, 17 FCC Rcd 19212 n.66); Petition at Attachment B (setting forth the insulating language contained in the limited partnership agreement of each of the Carlyle Partnerships). We note that the insulating language used by the Petitioner is stricter than the insulation requirements traditionally applied by the International Bureau. See *XO Communications*, 17 FCC Rcd at 19222-23, ¶ 25.

⁶² This amount represents the sum of the ownership interests held by the foreign limited partners of CP III Hawaii and CHP III Hawaii A from WTO Member countries. According to the Petitioner, foreign limited partners from

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the Petitioner, we find that this 40.88 percent indirect equity interest in Paradise MergerSub is properly treated as investment from a WTO Member country for purposes of our public interest analysis under section 310(b)(4) of the Act and the Commission's foreign ownership policies adopted in the *Foreign Participation Order*.⁶³ We also find that the foreign limited partners of CP III Hawaii and CP III Hawaii A from non-WTO Member countries would hold an indirect 2.20% foreign equity interest in Paradise MergerSub.⁶⁴ Therefore, the total foreign equity interest that would be held in Paradise MergerSub through CP III Hawaii and CP III Hawaii A is 43.08 percent ($40.88\% + 2.20\% = 43.08\%$). Consistent with our foreign ownership case precedent, we also calculate for these insulated foreign limited partners a voting interest that matches their respective equity interest in CP III Hawaii and CP III Hawaii A.⁶⁵ Accordingly, we attribute to the foreign limited partners of CP III Hawaii and CP III Hawaii A an indirect 43.08 percent voting interest in Paradise MergerSub.

22. In calculating the foreign voting interests that would be held in Paradise MergerSub by or through the Carlyle Partnerships' controlling interest holders, we do not apply the multiplier to any link in the vertical ownership chain that constitutes a controlling interest in the company positioned in the next lower tier.⁶⁶ As we explained above, the controlling interest holders of the Carlyle Partnerships are TC Group III, L.P., TC Group III, L.L.C., TC Group, L.L.C., and TCG Holdings, each of which is organized under Delaware law, and the managing members of TCG Holdings, each of which is a U.S. citizen.⁶⁷ Thirty non-managing members hold equity interests in TCG Holdings, four of whom are citizens of WTO Member countries who hold, in the aggregate, less than 2.20 percent of the equity interests in TCG Holdings.⁶⁸ According to the Petition, the four non-managing members of TCG Holdings are all citizens of WTO Member countries (two are citizens of France, one is a citizen of Australia, and the other is a citizen of Japan).⁶⁹ Similar to the limited partners of the Carlyle Partnerships, the non-managing

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WTO Member countries hold directly a 42.11% equity interest in CP III Hawaii, which amounts to a 40.64% indirect equity interest in Paradise MergerSub ($42.11\% \times 96.50\% = 40.64\%$). Petition at 10; Petition Attachment D at 4. The Petitioner further states that foreign limited partners from WTO Member countries hold a 4.46% direct equity interest in CP III Hawaii A, which amounts to a 0.24% indirect equity interest in Paradise MergerSub ($4.46\% \times 5.40\% = 0.24\%$). *Id.*

⁶³ In accordance with our precedent, this investment is entitled to a rebuttable presumption by which the Commission presumes that this investment does not pose a risk to competition, and there is no evidence to rebut this presumption. *Foreign Participation Order*, 12 FCC Rcd at 23913-15, ¶¶ 51-54; *see supra* ¶ 13.

⁶⁴ This amount represents the sum of the ownership interests held by the foreign limited partners of CP III Hawaii and CHP III Hawaii A from non-WTO Member countries. According to the Petitioner, foreign limited partners from non-WTO Member countries (the Bahamas, Liberia, Monaco, and Saudi Arabia) hold directly 2.28% equity interest in CP III Hawaii, which amounts to a 2.20% indirect equity interest in Paradise MergerSub ($2.28 \times 96.50\% = 2.20\%$). Petition at 10; Petition Attachment D at 4; Jan. 14 Letter. Additionally, other foreign limited partners from non-WTO Member countries hold a 0.08% direct equity interest in CP III Hawaii A, which amounts to a 0% indirect equity interest in Paradise MergerSub ($0.08\% \times 5.40\% = 0\%$). *Id.*

⁶⁵ *XO Communications*, 17 FCC Rcd at 19221, ¶ 25. *See also supra* ¶ 12 and accompanying notes.

⁶⁶ *See supra* ¶ 12 and accompanying notes.

⁶⁷ *See supra* ¶ 16.

⁶⁸ Petition at 5-6; Petition Attachment D at 10. We have calculated a 0% equity interest for each of the foreign non-managing members of TCG Holdings because, as noted previously, TC Group III, L.P. itself holds a small equity interest in each of the Carlyle Partnerships (at most 0.10%). *See supra* note 10. Because we use the multiplier in calculating foreign equity interests, the foreign non-managing members' equity interests constitute a negligible contribution of foreign equity in Paradise MergerSub ($2.20\% \times 0.10\%$), which we have rounded down to 0% for purposes of our foreign ownership analysis.

⁶⁹ Petition at 5-6; Petition Attachment D at 10.

members of TCG Holdings are passive investors with no control over the day-to-day operation of TCG Holdings.⁷⁰ Consistent with our policy and precedent, however, we do not use the multiplier for calculating the voting interests of these foreign non-managing members of TCG Holdings, which ultimately controls Paradise MergerSub. Thus, we attribute to Paradise MergerSub the full 2.20 percent voting interest held in TCG Holdings by these four citizens from WTO Member countries.⁷¹

23. In summary, we find that: (1) the maximum total indirect foreign equity and voting interests identified in the record that would be held in Paradise MergerSub through the Carlyle Partnerships, by its limited partners, is 43.08 percent, of which 40.88 percent is properly ascribed to WTO member countries and 2.20 percent is ascribed to non-WTO Member countries; and (2) the total indirect foreign voting interests identified in the record that would be held in Paradise MergerSub through the controlling interest holders of the Carlyle Partnerships is 2.20 percent, all of which is ascribed to WTO Member countries.

B. National Security, Law Enforcement, Foreign Policy and Trade Policy Concerns

24. In acting on petitions for declaratory ruling pursuant to section 310(b)(4), the Commission also considers any national security, law enforcement, foreign policy, or trade policy concerns.⁷² We take into account the record and afford the appropriate level of deference to Executive Branch expertise on national security, law enforcement, foreign policy and trade policy issues.⁷³ In this case, we note that the Executive Branch has not raised any national security, law enforcement, foreign policy, or trade concerns with the Petition. Moreover, the Commission has already found that the underlying transaction is in the public interest.⁷⁴ We, therefore, conclude, pursuant to section 310(b)(4) of the Act and the Commission's open entry standards for indirect investment by WTO Members in U.S. common carrier licensees as set forth in the *Foreign Participation Order*, that it will not serve the public interest to prohibit the proposed indirect foreign ownership of Verizon Hawaii through the Carlyle Partnerships in excess of the statutory 25 percent benchmark.

IV. DECLARATORY RULING

25. This Declaratory Ruling permits Verizon Hawaii to be owned indirectly by: (1) the foreign limited partners of CP III Hawaii and CP III Hawaii A identified in the record (up to and including 43.08 percent equity and voting interests) and (2) the foreign non-managing members of TCG Holdings identified in the record (up to and including 2.20 percent voting interests). Verizon Hawaii may accept up to and including an additional 25 percent indirect equity and voting interest from the identified foreign investors of the Carlyle Partnerships and from other foreign investors without seeking prior Commission approval under section 310(b)(4) of the Act, subject to the following conditions. First, Verizon Hawaii shall obtain prior approval before any foreign individual or entity acquires a greater-than-25-percent indirect equity or voting interest in Paradise MergerSub. Second, Verizon Hawaii shall obtain prior approval before its total indirect foreign equity or voting interests from non-WTO investors exceeds 25 percent.⁷⁵ Third, Verizon Hawaii shall obtain prior approval before its total indirect foreign ownership

⁷⁰ Petition at 6.

⁷¹ See *supra* ¶ 12 and accompanying notes.

⁷² *Foreign Participation Order*, 12 FCC Rcd at 23918, ¶ 59. The Commission stated that foreign participation in the U.S. telecommunications market may implicate significant national security or law enforcement issues uniquely within the expertise of the Executive Branch. *Id.* at 23919, ¶ 62.

⁷³ *Id.* at 23919-21, ¶¶ 61-66.

⁷⁴ See *supra* note 3.

⁷⁵ Thus, although Petitioner committed to limit total non-WTO investment in the Carlyle Partnerships to no greater than 2.20% equity and voting interests, see *supra* ¶ 5, we find this limitation to be unduly restrictive and have not

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exceeds 45 percent equity and 47.20 percent voting interests. For purposes of calculating the aggregate 25 percent amount, Verizon Hawaii shall include any additional equity or voting interests acquired by the Carlyle Partnerships' current direct and indirect foreign investors, as well as any additional equity or voting interests acquired by new investors. We will permit, however, the substitution of the non-managing members of TCG Holdings, provided the new non-managing members are citizens of France, Australia, or Japan. We also require the Petitioner to submit a certification of the actual ownership interests held by each of the Carlyle Partnerships in Paradise HoldCo and of the actual foreign equity and voting interests held in each Carlyle Partnership within 10 days of closing.

26. We emphasize that, as a Commission licensee, Verizon Hawaii has an affirmative duty to continue to monitor its foreign equity and voting interests and to calculate these interests consistent with the attribution principles enunciated by the Commission.⁷⁶ Accordingly, we grant the Petition for Declaratory Ruling filed by Paradise MergerSub, subject to the requirements and conditions specified herein.

V. CONCLUSION

27. Based on the foregoing findings and pursuant to section 310(b)(4) of the Act and the Commission's precedent for indirect investment by WTO Members in U.S. common carrier licensees, we conclude that it would not serve the public interest to prohibit the proposed indirect foreign ownership through the Carlyle Partnerships in Verizon Hawaii, subject to the limitations specified in paragraph 25.

VI. ORDERING CLAUSES

28. Accordingly, IT IS ORDERED that, pursuant to section 310(b)(4) of the Communications Act of 1934, as amended, 47 U.S.C. § 310(b)(4), the petition for declaratory ruling IS GRANTED to the extent specified in paragraphs 13 and 27 of this Order and Declaratory Ruling. Failure to comply with all relevant Commission rules, policy, or the specific conditions of the grant of the Petition for Declaratory Ruling could subject the Petitioner to enforcement action, including but not limited to the imposition of forfeitures.

29. IT IS FURTHER ORDERED that, pursuant to section 1.65 of the Commission's rules, 47 C.F.R. § 1.65, the Petitioner is afforded 30 days from the date of release of this Order and Declaratory Ruling to amend any pending applications in connection with the instant Petition to reflect the approval in this Order and Declaratory Ruling.

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imposed such a limitation in other section 310(b)(4) rulings. Consistent with our foreign ownership precedent, however, our ruling does require that any equity or voting interests acquired by foreign investors that are not identified in the record of this proceeding, including new investors that may participate in the venture through CHP II, be included in the additional, aggregate 25% amount, or "cushion," that we provide in the ruling.

⁷⁶ See *Intelsat-Zeus Order*, *supra* note 57, ¶ 27.

30. This Order and Declaratory Ruling is issued pursuant to authority delegated by section 0.261 of the Commission's rules, 47 C.F.R. § 0.261 and is effective upon release. Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules, 47 C.F.R. §§ 1.106, 1.115, may be filed within 30 days of the date of the release of this Order and Declaratory Ruling. *See* 47 C.F.R. § 1.4(b)(2).

FEDERAL COMMUNICATIONS COMMISSION

James Ball
Chief, Policy Division
International Bureau